

App. No. 10/523,865

REMARKS

Favorable reconsideration is respectfully requested in view of the above amendments and following remarks. Claims 1, 5, 7, 8, 12, 13 and 17-19 have been amended. The amendment to claim 1 is supported by the original disclosure, for example original claim 4 and page 14 of the specification. The amendment to claim 8 is supported by the original disclosure, for example previous claim 11 and page 17 of the specification. The amendment to claim 13 is supported by the original disclosure, for example previous claim 16 and page 20 of the specification. Claims 5, 7, 12 and 17-19 have been amended editorially. Claims 2-4, 6, 9-11 and 14-16 have been canceled without prejudice or disclaimer. No new matter has been added. Claims 1, 5, 7-8, 12-13 and 17-19 are pending.

Claim rejections - 35 U.S.C. § 102

Claims 1, 2, 5, 6, 8, 9, 12-14 and 17 have been rejected as anticipated by U.S. Patent Application Publication No. 2005/0106748 (Proffitt et al.). The rejection is rendered moot, as claim 1 includes the features of claim 4, claim 8 includes the features of claim 11 and claim 13 includes the features of claim 16. Claims 4, 11 and 16 were not included in the rejection. Claims 5 depends on claim 1, claims 9 and 12 depend on claim 8 and claim 17 depends on claim 13. Applicants do not concede the correctness of the rejection.

Claim rejections - 35 U.S.C. § 103

Claims 3, 10 and 15 are rejected as unpatentable over U.S. Patent Application Publication No. 2005/0106748 (Proffitt et al.). The rejection is rendered moot, as claims 3, 10 and 15 have been canceled. Applicants do not concede the correctness of the rejection.

Claims 4, 11, and 16 have been rejected as unpatentable over U.S. Patent Application Publication No. 2005/0106748 (Proffitt et al.) in view of U.S. Patent No. 5,772,696 (Sujeeth). Applicants respectfully traverse the rejection.

The rejection notes that Proffitt et al. do not explicitly teach the assay indicator where sodium is bound to the hydroxyl and carboxyl groups. The rejection then refers to col. 5, lines 30-45 of Sajeeth and contends that it would have obvious to modify the method of Proffitt et al. in view of Sujeeth to bind sodium to make a salt in order to increase the water solubility of the compound and measure albumin. Applicants respectfully submit that the rejection is relying on the improper use of hindsight in the interpretation of the reference.

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Sujeeth is directed to a method for purifying water soluble dyes, and in particular, quinoline, fluoran and xanthene dyes (col. 1, lines 9-12). The reference teaches that the dyes can be purified by adding a salt to the dye solution to precipitate the dye as a dye salt, isolating the insoluble dye salt, and then converting the insoluble dye salt into a soluble dye solution by the addition of corresponding weak acid salts such as carbonate, bicarbonate, phosphate etc. (col. 3, line 51 to col. 4, line 17; col. 6, lines 57-61). Sujeeth provides a glossary of quinoline, fluoran and xanthene dyes that are in their insoluble and soluble form (col. 4, line 24 to col. 5, line 45). Thus, it can be clearly understood from this discussion that Sujeeth is focused on the purification of certain dyes and merely provides a list that describes the insoluble and soluble form of dyes that can be purified by their method.

In contrast, claim 1 is directed to a method for assaying albumin in urine using a protein assay indicator and requires using a compound having a chemical structure expressed by one of chemical formulas (1)-1 and (1)-2 as a protein assay indicator for assaying albumin in urine. Claim 8 is directed to a protein assay indicator for assaying albumin in urine and requires the indicator to have a chemical structure expressed by one of chemical formulas (2)-1 and (2)-2. Claim 13 is directed to a test piece for quantifying or semi-quantifying albumin in urine, and requires a compound having a chemical structure expressed by one of chemical formulas (3)-1 and (3)-2 as a protein assay indicator. Nothing in Sujeeth teaches or even suggests using the above compounds as a protein assay indicator for assaying albumin in urine as required by the claims. Accordingly, claims 1, 8 and 13 and the dependent claims therefrom are patentable over the references taken alone or together for at least these reasons.

In view of the above, favorable reconsideration in the form of a notice of allowance is requested. Any questions or concerns regarding this communication can be directed to the attorney-of-record, Douglas P. Mueller, Reg. No. 30,300, at (612) 455.3804.



Dated: Feb. 13, 2009

DPM/ym

Respectfully submitted,

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